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Attorneys for Plaintiff,
Tamika McLemore

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

Tamika McLemore,

Case No.: 2:20-cv-00070-DAK

Plaintiff,

vs.

Aldous & Associates, PLLC; and DOES 1-10,
inclusive,

Defendants.

COMPLAINT

For this Complaint, the Plaintiff, Tamika McLemore, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendants' repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA") and violations of the Telephone

Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (“TCPA”) by the Defendants and its agents in their illegal efforts to collect a consumer debt.

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendants transact business here and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

3. The Plaintiff, Tamika McLemore (hereafter “Plaintiff”), is an adult individual residing in Columbia, South Carolina, and is a “consumer” as the term is defined by 15 U.S.C. § 1692a(3) and is a “person” as defined by 47 U.S.C. § 153(39).

4. The Defendant, Aldous & Associates, PLLC (hereafter “Aldous”), is an Utah company with an address of 4262 Imperial Way, Provo, Utah 84604, operating as a collection agency, and is a “debt collector” as the term is defined by 15 U.S.C. § 1692a(6).

5. Does 1-10 (the “Collectors”) are individual collectors employed by Aldous and whose identities are currently unknown to the Plaintiff. One or more of the Collectors may be joined as parties once their identities are disclosed through discovery.

6. Aldous at all times acted by and through one or more of the Collectors.

ALLEGATIONS APPLICABLE TO ALL COUNTS

A. The Debt

7. The Plaintiff allegedly incurred a financial obligation (the “Debt”) to an original creditor (the “Creditor”).

8. The Debt arose from services provided by the Creditor which were primarily for family, personal or household purposes and which meets the definition of a “debt” under 15 U.S.C. § 1692a(5).

9. The Debt was purchased, assigned or transferred to Aldous for collection, or Aldous was employed by the Creditor to collect the Debt.

10. The Defendants attempted to collect the Debt and, as such, engaged in “communications” as defined in 15 U.S.C. § 1692a(2).

B. Aldous Engages in Harassment and Abusive Tactics

11. Within the last year, Aldous began calling Plaintiff in an attempt to collect the Debt.

12. The calls were placed to Plaintiff’s cellular phone, number 803-xxx-2928.

13. The calls were placed from telephone numbers 801-272-5281 and 385-388-8005.

14. When Plaintiff answered the phone, she was met with a period of silence before being transferred to an Aldous operator.

15. The foregoing is indicative of a predictive dialer, an automated telephone dialing system (ATDS) under the TCPA.

16. In addition, Aldous left prerecorded voice messages for Plaintiff.

17. On October 18, 2019, Plaintiff demanded that the automated calls cease.

18. Nevertheless, the calls continued.

19. Aldous’ actions caused Plaintiff to feel harassed.

B. Plaintiff Suffered Actual Damages

20. The Plaintiff has suffered and continues to suffer actual damages as a result of the Defendants’ unlawful conduct.

21. As a direct consequence of the Defendants' acts, practices and conduct, the Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional distress, fear, frustration and embarrassment.

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692, et seq.

22. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

23. The Defendants engaged in behavior the natural consequence of which was to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt, in violation of 15 U.S.C. § 1692d.

24. The Defendants caused a phone to ring repeatedly and engaged the Plaintiff in telephone conversations, with the intent to annoy and harass, in violation of 15 U.S.C. § 1692d(5).

25. The Defendants used false, deceptive, or misleading representation or means in connection with the collection of a debt, in violation of 15 U.S.C. § 1692e.

26. The Defendants employed false and deceptive means to collect a debt, in violation of 15 U.S.C. § 1692e(10).

27. The Defendants used unfair and unconscionable means to collect a debt, in violation of 15 U.S.C. § 1692f.

28. The foregoing acts and omissions of the Defendants constitute numerous and multiple violations of the FDCPA, including every one of the above-cited provisions.

29. The Plaintiff is entitled to damages as a result of the Defendants' violations.

COUNT II

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –

47 U.S.C. § 227, et seq.

30. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

31. At all times mentioned herein and within the last four years, Defendants called Plaintiff on her cellular telephone using an automatic telephone dialing system (“ATDS” or “Predictive Dialer”).

32. In expanding on the prohibitions of the TCPA, the Federal Communications Commission (FCC) defines a Predictive Dialer as “a dialing system that automatically dials consumers’ telephone numbers in a manner that “predicts” the time when a consumer will answer the phone and a [representative] will be available to take the call...” *2003 TCPA Order*, 18 FCC 36 Rcd 14022. The FCC explains that if a representative is not “free to take a call that has been placed by a predictive dialer, the consumer answers the phone only to hear ‘dead air’ or a dial tone, causing frustration.” *Id.* In addition, the TCPA places prohibitions on companies that “abandon” calls by setting “the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned.” *Id.*

33. Defendants’ telephone systems have all the earmarks of a Predictive Dialer.

34. When Plaintiff answered the phone, she was met with a period of silence before Defendants’ telephone system would connect her to the next available representative.

35. Defendants' Predictive Dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

36. Plaintiff revoked her consent by her demand to cease calls to her cellular telephone.

37. The calls from Defendants to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

38. The telephone number called by Defendants was and is assigned to a cellular telephone serviced by T-Mobile for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

39. Plaintiff was annoyed, harassed and inconvenienced by Defendants' continued calls.

40. Each of the aforementioned calls made by Defendants constitutes a violation of the TCPA.

41. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

42. As a result of each of Defendants' knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants:

- A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the Defendants;
- B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against the Defendants;

- C. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against the Defendants;
- D. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
- E. Actual damages from the Defendants for the all damages including emotional distress suffered as a result of the intentional, reckless, and/or negligent FDCPA violations and intentional, reckless, and/or negligent invasions of privacy in an amount to be determined at trial for the Plaintiff;
- F. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: February 5, 2020

Hussey Law Firm, LLC

By: /s/ Curtis R. Hussey
Curtis R. Hussey

Attorney for Plaintiff
Tamika McLemore